

**Remarks**

The claims have been amended to provide further clarification and to provide adequate coverage for Applicants' contribution to the art. The amendments are clearly supported by the original disclosure, particularly at paragraph [108 ].

Reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Generally stated, the present invention provides an absorbent article having a longitudinal direction, a lateral direction, first and second longitudinally opposed end portions, and an intermediate portion located between the end portions. The article comprises an absorbent body sandwiched between a cover and a baffle, and in particular aspects, the article can include an absorbent body having an intake layer and a longitudinally asymmetric shaping layer, and the intake layer can be positioned between the cover and the shaping layer. With other aspects, the shaping layer can include first longitudinal half-length, a second longitudinal half-length, a narrow-section, a wide-section, and a transition-section that is located between the narrow and wide sections of the shaping layer. Additionally, the narrow-section of the shaping layer includes a terminal end edge located in the second half-length of the shaping layer. In further aspects, the intake layer can be longitudinally offset toward an article region which is demarcated or delimited by the first half-length of the shaping layer, and the intake layer can substantially avoid extending into an article region that is delimited by the narrow-section of the shaping layer. Other aspects are set forth in the specification and claims.

By incorporating its various features and configurations, the article of the invention can better maintain its shape, provide less bunching or twisting, and provide greater comfort and fit. The article can be more confidently worn with different styles of panty undergarments while also providing desired levels of absorbent capacity and desired rates of liquid-intake. Additionally, the article can provide different, more effective levels of stiffness and flexibility in desired regions of the absorbent article. Particular features of the article can provide improved aesthetics and visual cues or perceptions of absorbency. Additionally, the article can be less susceptible to excessive bunching and shifting, less

susceptible to premature leakage, and can provide greater protection and confidence to the wearer.

Claims 1 – 22 have been alleged to be actionable under 35 U.S.C. § 103 based on U.S. Patent 6,608,236 to Burnes et al. (Burnes). This action is respectfully **traversed** to the extent that it may apply to the currently presented claims.

It is respectfully submitted that the Examiner's actions under 35 U.S.C. §103, based on the teachings of the cited reference, are not proper; and that the teachings of the cited reference do not render obvious a structure having the combination of components called for by Applicants' claimed invention. It is submitted that the Examiner has not established *prima facie* that a proper combination of the cited references would disclose or suggest Applicants' claimed invention.

It is well accepted that, as a minimum, a *prima facie* case of obviousness must contain the following elements:

- 1) there must be a basis in the reference for a modification;
- 2) there must be a reasonable expectation of success -- obvious to "try" is not the standard; and
- 3) the prior art must render obvious the invention as a whole.

In addition, it is not appropriate to engage in hindsight. It is inappropriate to pick and choose isolated elements from various prior art references and combine them so as to yield the invention in question when such combining would not have been an obvious thing to do at the time in question. Panduit Corporation v. Dennison Manufacturing Company, 227 USPQ 337 (Fed. Cir. 1985).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious, unless the prior art suggested the desirability of the modification. In re Gordon, 733 F.2d at 902, 221 USPQ at 1127. In re Fritch, 23 USPQ 2d 1780, 1783-1784 (Fed. Cir. 1992).

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In re Gorman, 933 Fed. 2d 982, 987. 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991). In re Fritch, 23 USPQ 2d 1780 at 1784 (Fed. Cir. 1992). One cannot use hindsight

reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fine, 837 Fed. 2d at 1075, 5 USPQ 2d at 1600. In re Fritch, 23 USPQ 2d 1780 at 1784 (Fed. Cir. 1992). Where the cited references do not teach how to make the particular combinations needed to arrive at the invention called for by Applicants' claims, the claimed invention cannot be deemed "obvious". Ex parte Levengood, 1993.

It is also well established that a prior art reference must be evaluated as an entirety and that the prior art must be evaluated as a whole. W. L. Gore and Associates, Inc. v. Garlock, Inc., 220 USPQ 303 (Fed. Cir. 1983). Where neither any reference considered in its entirety, nor the prior art as a whole, suggests the combination claimed, the invention is non-obvious. Fromson v. Advance Offset Plate, Inc., 225 USPQ 26 (Fed. Cir. 1985).

Burnes describes a distribution material for personal care products. Burnes also describes a personal care product system having a generally rectangular distribution/retention layer, and a generally "hourglass", pad shaping layer. Each layer has a stain length ratio of 0.5 or less and the distribution/retention layer has a saturation profile of 4 or less. Additionally, the distribution/retention layer extends into both longitudinal half-sections of the shaping layer. As recognized by the Examiner, Burnes shows a layer 9 having two wider sections at the ends and a narrow section connecting the two wider sections, with two respective transition sections between the narrow sections and the wide sections.

Burnes, however, does not disclose or suggest an arrangement where a narrow-section of the shaping layer includes a terminal end edge located in the second half-length of the shaping layer, as called for by Applicants' currently presented claims. With the structural arrangements recognized by the Examiner, the alleged "narrow-section" of the Burnes article does not have a terminal end edge.

Burnes also does not teach an arrangement where the narrow-section of the shaping layer substantially avoids extending into an article region that is delimited by the first longitudinal half-length of the shaping layer, as called for by Applicants' claimed invention (e.g. claim 3). Additionally, Burnes does not teach an intake layer which substantially avoids extending into a region of the article that is delimited by said narrow-section of the shaping layer, as called for by Applicants' currently presented claims (e.g. claim 4). Moreover, Burnes does not suggest an arrangement where the shaping layer has a lower-limit lateral dimension

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which is located in the second half-length of the shaping layer, as called for by the claimed invention (e.g. claim 11). Neither does Burnes suggest an arrangement where the intake-layer has a total absorbent capacity which is less than the total absorbent capacity of the shaping-layer, as called for by the claimed invention (e.g. claim 19). Burnes also does not suggest an arrangement where the article further includes asymmetric narrow-section-wings (e.g. claim 22).

The Examiner has alleged various changes that might be made to synthesize revised structures. It is readily apparent, however, that when a person of ordinary skill starts with the structures taught by Burnes, the person of ordinary skill would have no motivation to make the distinctive changes and modifications needed to synthesize the configurations called for by Applicants' presented claims. Only through impermissible hindsight and the improper use of the claimed invention as an instruction manual or "template" to pick and choose from a myriad of disparate components would the claimed invention become apparent to the person of ordinary skill. It is, therefore, readily apparent that Burnes does not disclose or suggest the invention called for by Applicants' currently presented claims. Accordingly, reconsideration and withdrawal of the Examiner's actions under 35 U.S.C. §103 are respectfully requested.

For the reasons stated above, it is respectfully submitted that all of the currently presented claims are in form for allowance. Accordingly, reconsideration and withdrawal of the Examiner's actions, and allowance of the currently presented claims are earnestly solicited.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-2435.

Respectfully submitted,

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